ville & Nashville R. Co. *v.* Railroad Commission of Tennessee (C. C.) 19 Fed. 679; Tozer *v.* United States (C. C.) 52 Fed. 917; Hocking Valley Ry. Co. *v.* United States, 210 Fed. 735, 127 C. C. A. 285; United States *v.* L. Cohen Grocer Co., 264 Fed. 218 (recent unreported decision of the United States District Court for Eastern District of Missouri); United States *v.* Capital Traction Co., 34 App. D. C. 592, 19 Ann. Cas. 68; Louisville & Nashville R. R. Co. *v.* Commonwealth, 99 Ky. 132, 35 S. W. 129, 33 L. R. A. 209, 59 Am. St. Rep. 457."

Gifts—Check Given to Payee but Not Cashed before Drawer's Death.—In Edwards *v.* Guaranty Trust & Savings Bank, 190 Pac. 57, the California District Court of Appeals held that where the donor's check, given to the payee as a gift, and presented to the drawee bank prior to drawer's death, was not accepted or paid before such death, although payment was rejected without any malicious or wrongful intent, for a reason later shown to be incorrect, there was no valid gift.

The court said in part: "In the case of Provident, etc., *v.* Sisters, etc. 87 N. J. Eq. 424, 100 Atl. 894, the Court of Chancery of New Jersey had before it a case in its material aspects very similar to the case at bar. Mrs. Bowdoin, an old lady, 86 years of age, had died in the hospital. The day before her death she gave a check to the defendant in that case for $3,000. On the same day the check was given it was presented at the bank upon which it was drawn, and payment was refused, not absolutely, but until investigation could be made. The old lady died the next day, and before any further efforts to collect the check were made. The court in that case—which is a well-considered case, and very illuminating and instructive—among other things said:

" 'It is well settled that a gift cannot be effected by the delivery of a check upon an ordinary bank of deposit when the drawer's account is good for the amount. The reason is that until the check is cashed the drawer may stop payment. In such a case the donative purpose may be absolute when the check is given, and ten minutes, or ten hours, or ten days later, at any time before the check has been cashed, such donative purpose may be wholly changed and abrogated. The fundamental principle of the law of gifts is that the gift, to be effective, must place the thing donated beyond the control of the donor. Where a check on a bank of deposit is given for value, it often operates as an equitable assignment, but such is not the case where a check is given to the payee as a pure donation. * * * It cannot be questioned in this case that, if Mrs. Bowdoin had given a check on an ordinary bank of deposit, no gift would have been effected until the check had been cashed. Nor does it make any difference what may delay or prevent the check from being cashed.'

"We are in full accord with this reasoning and the conclusion

reached. See notes L. R. A. 1918C, 340; Foxworthy *v.* Adams (Ky.) 27 L. R. A. (N. S.) 308; Estate of Taylor (Pa.) 18 L. R. A. 855. Until the money was actually paid over or transferred from Liveson's account to that of the plaintiff by the drawee bank the gift, whether it be regarded as inter vivos or causa mortis, would be revocable, and after the death of Liveson the whole transaction would have stood legally as an incomplete gift, entirely unenforceable at law or in equity. Provident, etc., *v.* Sisters, etc., supra. 'To constitute a valid gift inter vivos, the purpose of the donor to make the gift must be clearly and satisfactorily established, and the gift must be complete by actual, constructive or symbolical delivery, without power of revocation.' 20 Cyc. 1193. In order to accomplish this, 'there must be a parting by the donor with all present and future legal power and dominion over the property.' 20 Cyc. 1196; Tracy *v.* Alvord, 118 Cal. 654, 50 Pac. 757; Pullen *v.* Placer County Bank, 138 Cal. 169, 66 Pac. 740, 71 Pac. 83, 94 Am. St. Rep. 19; Simmons *v.* Savings Society, 31 Ohio, 457, 27 Am. Rep. 521. That the law of this state is as stated in the Provident Case, supra, will be seen by a perusal of that and the other cases cited therein, citing and quoting from the Califofrnia cases at length.

"As the result, therefore, of our own independent search, we are confident that 'the great weight of authority supports the proposition that one cannot make his own check * * * the subject of a gift, so that, in the absence of payment, it can be enforced against the donor or his representatives." Foxworthy *v.* Adams, supra, 136 Ky. 403, 124 S. W. 381, 27 L. R. A. (N. S.) 308 and note thereunder.

"It may be conceded that the record here discloses sufficient facts so that we may infer that it was really the intention of the deceased to make a gift of the money on deposit in the bank, to the extent of $4,000 to plaintiff. Still, as was said in the case of Noble *v.* Garden, 146 Cal. 225, 79 Pac. 883, 2 Ann. Cas. 1001, 'however much we may desire to carry out the intentions of deceased, we cannot do so in this case, because the effect would be to hold valid an oral testamentary disposition of her property,' which, under the authorities, as we have seen, cannot legally be done."

Inns and Innkeepers—What Constitutes a Restaurant.—In Manesis *v.* Sulunias, 103 S. E. 459, the Supreme Court of Georgia held that where, by the terms of a storehouse lease, it is provided that the premises cannot be used as a "restaurant," and it appears that the lessee is using the same for serving "wienerwursts, frankfurters, hamburgers, bread, cold drinks, and pies," a judgment granting a temporary injunction against such use of the premises is not erroneous.

The court said: "'A restaurant is generally understood to be a